



Early Journal Content on JSTOR, Free to Anyone in the World

This article is one of nearly 500,000 scholarly works digitized and made freely available to everyone in the world by JSTOR.

Known as the Early Journal Content, this set of works include research articles, news, letters, and other writings published in more than 200 of the oldest leading academic journals. The works date from the mid-seventeenth to the early twentieth centuries.

We encourage people to read and share the Early Journal Content openly and to tell others that this resource exists. People may post this content online or redistribute in any way for non-commercial purposes.

Read more about Early Journal Content at <http://about.jstor.org/participate-jstor/individuals/early-journal-content>.

JSTOR is a digital library of academic journals, books, and primary source objects. JSTOR helps people discover, use, and build upon a wide range of content through a powerful research and teaching platform, and preserves this content for future generations. JSTOR is part of ITHAKA, a not-for-profit organization that also includes Ithaka S+R and Portico. For more information about JSTOR, please contact support@jstor.org.

THE COURTS AND PRISON LABOR

By GEORGE COSSON,
Attorney-General of Iowa.

Those who decry against the tendency of humanitarian methods of punishment should remember that the more barbaric and severe the punishment, the less will be the number of convictions and consequently the less the fear of punishment.

Not only juries but courts consider the kind and character of punishment in dealing with criminals. There is scarcely a criminal trial but what jurors discuss the punishment to be meted out to the defendant, and because of this, some judges decline to mention in the instruction the nature of the punishment, especially if the punishment is severe. But jurors can hardly be criticised for this when courts themselves are greatly influenced by the punishment to be inflicted upon the defendant. Indeed, the very inception of technicalities and refinements of court procedure was invented by courts because of the undue harshness and severity of the criminal law two or three centuries ago. As late as 1909 it was held in England in the case of *R. V. Kirkpatrick*, 73 J. P. 29, that the judge might properly take into consideration the treatment a prisoner would receive while under sentence, and to this effect see also *R. V. Syres*, 73 J. P. 13; but we do not need to go beyond the boundary of our own state.

Our own supreme court in the recent case of *State vs. Baker*, who was charged with murder and convicted of murder in the second degree, held there was ample evidence on the part of the state to rebut the theory of the defendant of self-defense, but on a re-hearing reduced the sentence of the defendant from twenty-two years to fifteen, notwithstanding the parole board is created for the special purpose of determining when it is wise to release criminals under parole or pardon. The recent action of Governor Donaghey, of Arkansas, in releasing 360 prisoners who were working under the contract labor system is familiar to all.

In view of the fact then that executives, courts and jurors are influenced by the punishment prescribed for criminals, if the punish-

ment is not wise, humane and just, it results in the escape of a large number of prisoners from any punishment at all.

It follows that while improvement may be made by reform in court procedure, no permanent or complete relief can come except by a fundamental change in our entire penal system. The defendant must be compelled to right the wrong that he has committed in so far as possible, he must become a producer and be required to support himself, and, if possible, those dependent upon him, and in so far as possible and practicable to return to society that which he has wrongfully acquired.¹ A complete change in the penal system of Iowa was recommended as the result of the investigations of the special committee appointed by the governor which reported in 1912.²

The death blow has been struck at the contract system of penal labor and nothing remains to be done except properly to arrange for the obsequies. In Iowa, the Board of Control has gone on record against this system, and planks declaring against it were contained in the platforms of Republican, Democratic and Progressive parties. Moreover, a similar plank was found in the National Progressive Platform; and the recent American Prison Congress at Baltimore registered a strong condemnation of it.

The objections to contract convict labor are that it is a form of slavery, and also unjustifiable because responsibility and authority are divorced. It is the exploitation of the helpless convict, not even for the profit of the state, but for the profit of a private corporation. It is to a greater or less degree the wrongful surrender and abandonment of control and jurisdiction over the person of the convict. It furnishes opportunity for convicts to communicate with the outside world in violation of the rules of the institution and to receive opium, morphine, cocaine and other forms of dope if the employees of the contractors are subject to improper influences, or even unduly sympathetic. It furnishes opportunity for corruption between the contractors and prison officials and officers of the law. It subjects prison officials to criticism regardless of whether or not there is real foundation for the charges. It tends to destroy discipline. It impairs reformation and destroys hope on

¹ Ninth Biennial Report of George Cosson, Attorney-General of Iowa, p. 18.

² Report of the Committee to Investigate the General Management of the Iowa Penitentiary at Fort Madison, pp. 56-8.

the part of the prisoner. It is injurious to the manufacturer employing free labor. It causes unfair competition to free labor, because it tends to destroy the living wage and lessens the opportunity for labor—on the whole, it is economically unsound.

The problem confronting us in this state is to devise a substitute for contract labor. It goes without saying that any system which confines able-bodied men in idleness and solitary confinement is infamous and barbaric, and is clearly economically unsound. Further elaboration is therefore not needed to demonstrate that when the contract convict labor system is abandoned, as it will be as soon as the present contracts expire, some other and better form of labor must be substituted.

Prison labor, in so far as possible, should be profitable; that is to say, every prisoner should not only be permitted, but compelled, to support himself, and in a large measure should support those dependent upon him.

The labor should not be injurious to the prisoner's health, but, on the contrary, should be of such a character as to render him stronger, both mentally and physically, at the time of his discharge than he was at the time of his entrance. Furthermore, the labor should be such that after his release he can profitably follow a similar calling, and in no way should it be prejudicial to free labor and the free manufacturer.

We cannot approach the question fairly unless we consider the welfare of society, the welfare of the prisoner himself, the welfare of those dependent upon him, the welfare of free labor and the welfare of the free manufacturer and the free producer.

All these elements must be kept in mind, and when all are considered and each given its due proportion, I think it will be found, beyond question, that the penal farm should be a large factor in the employment of prison labor in the State of Iowa. The farm should be established upon the colony system so as to afford opportunity for complete classification, segregation and individual treatment of prisoners. There should be confined to this farm first offenders who are not shown to be depraved and vicious by nature, except those who should receive special manual training, and these should be sent to Anamosa. The Board of Parole should have authority to transfer to the farm such recidivists and long-term offenders as had served a substantial part of their sentences at Fort Madison

and had also given such evidence of good conduct as to make it comparatively certain that if transferred to the farm no injury would result therefrom.

The farm should contain at least two thousand acres. It should be located so as to be reasonably accessible to the capital city. This would afford opportunity for more frequent inspection by the Governor, the Board of Control, the Board of Parole, the Attorney-General and members of the General Assembly. The farm should be isolated and hence should not be in the immediate proximity of any city or town. It should, however, be located near a steam or interurban railway with arrangements for station stop and side tracks.

There should be intensive farming following the scientific principles of agriculture. The farm should therefore be located reasonably accessible to our State Agricultural College at Ames, and the professors of our Agricultural College, post-graduates and under-graduate students of sufficient training should give instruction at the penal farm in scientific agriculture, including instruction in dairying, poultry and stock raising; in short, there should be such cooperation and assistance given by the Agricultural College as to furnish the prisoners with a knowledge of every branch necessary to practical farming under the most improved and scientific methods. This farm should not be sufficiently close to the Agricultural College and it goes without saying that the function of the Agricultural College should be to furnish instruction and nothing more. Under this system, instead of using military guards on dress parade, graduates of the Agricultural College could be used as instructors and co-laborers.

Cooperation of the Agricultural College with a large penal farm would be of very great value to both institutions. It would furnish for the college a means of experimentation and demonstration; it would furnish additional opportunity for students to put their theoretical knowledge into actual practice, and it would furnish the most healthful employment possible for the prisoners. It would be the highest kind of productive labor; it would give the prisoners that kind of practical knowledge which would be of the most value to them upon their release. The labor would not be injurious to free labor, nor would the prisoners be performing women's work, nor the work of the blind. Every branch of farming should, and

could, be carried on; and dairying and poultry and stock raising should all receive special attention.

Our Board of Parole says that a position can always be secured for a prisoner upon the farm if he is capable. The demand for farm laborers is always in excess of the supply, but the reverse of this is true with men engaged in other occupations. Many a man is kept at our penitentiaries and reformatories for a considerable period of time after he is subject to parole, until a position for him may be secured.

The value to the state and to society in transforming a large number of debilitated and shiftless men from cities and towns who previously spent their time in idleness into useful, healthy citizens to go into every part of the state upon their release and engage in the highest form of productive labor, viz., scientific agriculture, scientific dairying and poultry and stock raising, is beyond estimate; but even to return to the farm those who have previously been engaged in farming, instead of transferring them to cities and towns upon their release, at best only partly equipped to earn a livelihood, will be of untold value, provided that during their confinement on the penal farm they receive that knowledge and training in farming, and that degree of efficiency which they undoubtedly should receive.

The products of the farm need be injurious in no way to free labor, and it is beyond question that scientific agriculture and intensive farming may be made very profitable. Consequently farm work would permit the prisoner to be not only self-supporting, but to contribute largely to those dependent upon him.

Because of the peculiar location of Fort Madison, the supplies for the institution are largely purchased in the State of Illinois, the Iowa producer having no opportunity to compete. Not a ton of Iowa coal is used at Fort Madison. This, of course, is due entirely to the freight rate necessitated by the location. What is true of coal is true of many other supplies. If the Milwaukee Railway Company can abandon a part of its line in the State of Iowa in order to straighten its track and reduce its grade, surely the state itself can abandon an institution the location of which practically excludes the Iowa producer and jobber from furnishing supplies, and makes the cost of operation excessive. For these reasons, Fort Madison has been condemned by legislative committees and by the Board of Control. It is a subject of common remark that no worse location

could possibly have been found, either in this state or any other, for a penal institution. To enlarge the grounds at Fort Madison would only commit the State of Iowa to a third-rate policy in dealing with its defectives and criminals, while by the expenditure of a reasonable amount of money we can transform our penal system so as to place it in the forefront of the states of the Union.

Furthermore, practical prison officials, from the warden of our own penitentiary to the wardens and superintendents of the large penal institutions of this country and the directors and governors of the large penal institutions of Europe, and the leading authorities on penology in this and other countries, recognize three things as fundamental to any great prison reform, viz., classification, differentiation and segregation, and, to use a French phrase, "the individualization of punishment;" that is, the treatment of men as individual beings rather than the treatment of crime in the abstract or the convict as a type or class.

Sir Evelyn Ruggles Brise, who, at the last International Prison Congress at Washington, D. C., was elected to succeed Prof. Charles R. Henderson as president of the Congress, in his address to the Congress, said: "Of all the prison systems of the world, that will be the best where the arrangements admit of the greatest individual attention being given to each individual case."

This classification, this segregation and this individualization of treatment and punishment are not possible with the large number of offenders at Fort Madison, guilty of all forms and degrees of crime —hence a new state farm is absolutely indispensable.

The State of Iowa has not purchased an acre of ground for any of its institutions that it could not now sell at a profit of from one hundred to four hundred per cent, and it has not purchased an acre of ground for gardening or agricultural purposes which has not been operated at a profit.

If it is urged that the state cannot afford to appropriate sufficient money to purchase a new state farm, reasonably accessible to Des Moines and Ames, I can do no better than call attention to the fact that Illinois has recently appropriated \$600,000 for the purchase of a new farm of two thousand acres, and is now abandoning the Joliet prison, the present valuation of which is \$3,000,000, although its original cost was \$17,000,000. In connection with the Joliet prison is a farm of over two hundred acres.

All the prisoners could not be employed during the entire year in farming, but by the application of scientific methods, fruit, vegetables, dairy products, poultry, etc., sufficient to supply the state institutions could be produced and useful work furnished a large number of prisoners. The limited cooperation between the Board of Control and the Agricultural College is sufficient to show its importance. Prof. Beach and his assistants at Ames have rendered valuable assistance to Dr. Witte in the raising of apples and other fruits at the State Hospital for Insane at Clarinda, where an apple orchard of thirty acres has been made to produce an annual revenue for the last two years of \$125 per acre, notwithstanding the fact that over half of the trees were not bearing—all the work being done by the inmates of the institution under the direction of Prof. Beach.

A number of the men at Fort Madison and Anamosa can be worked upon the highways, although it is not advisable to work anyone on a highway, or, indeed, on a farm, unless he has shown such disposition and habits that he can be trusted within reasonable limits. It is not proposed to use chain gangs or armed guards. The work on the highways should be optional to men who have served sufficient time to be subject to parole, and they should be paid a reasonable wage; under such conditions there is no reason at all why prisoners may not be so employed with profit to themselves, to the state and to society.

Experience has taught us that if prisoners are properly compensated for their labors, their efficiency can be increased from ten to one hundred per cent, and I am thoroughly convinced that the business end of our penal institutions should be operated in much the same way that a large private enterprise is operated. The books of the institution should be so kept that the aggregate working force of the institution could be known. The men should be paid according to the efforts put forth; they should be enabled to pay for the cost of their conviction, and should be enabled to support those dependent upon them or be able to fund their savings against the day of their discharge. A proper allowance should also be made to those men who, by reason of infirmity, are unable to do a full day's work.

The jail system of Iowa, like the jail system of all the states of the Union, is the very worst system that it is possible to conceive—idleness and either solitary confinement or base companionship.

It is almost inconceivable that an enlightened, free people should continue a system as vicious and barbaric as the present jail system.

A few days ago one of the judges of the state called me in consultation as to what to do with certain men who were repeatedly guilty of gambling. They were spending their income in gambling; they were not supporting their families, and, with winter approaching, a jail sentence with comfortable lodging and good board seemed to be a form of reward to these particular characters, rather than a punishment.

State supervision of our county jails might, of course, eliminate a few evils, such as unsanitary conditions, the confinement of boys in the same buildings as hardened criminals with no barrier except a lattice work partition, and even the confinement of women under such conditions, but this would be merely a surface reform. This would not get at the root of the evil; it would not tend to compel the individual to do that which he has neglected and failed to do—support himself and those dependent upon him. We need a system which would compel a man to do that which he has failed to do; but no form of state supervision and state visitation would accomplish this purpose.

In an agricultural state, with but few cities, it is impossible for the various counties to provide any form of real productive labor for misdemeanants sentenced to a term in the county jail; and if it were possible to provide some means of work in the several counties, there would be as many kinds of discipline as there are sheriffs.

No man can be a detective, a policeman and a warden at one and the same time; and yet this is what we expect our county sheriffs to be.

I cannot insist too strongly upon the fundamental proposition that the state itself should administer the punishment for infraction of state laws. This can be done only by providing several state institutions which might be known as district farms.

All that has been said with reference to the necessity for a state farm for those guilty of felony is equally true as to the necessity of district farms. These district farms should be located in various parts of the state, so as to be accessible to the different counties and cities.

The necessity for segregation, classification and quarantine is as great with misdemeanants as with felons. Since a large percent-

age of all the inmates of the penitentiaries are under twenty-six years of age, and since every hardened criminal passed through the stage of a petty criminal, the necessity becomes apparent for more scientific methods of dealing with minor offenders so as to effect reformation rather than to furnish them with a university training in vice.

Nothing of greater importance will come before the Thirty-fifth General Assembly of the State of Iowa than the question of providing proper labor for all the criminal and delinquent classes of the state. To deal successfully with any criminal, whether guilty of a misdemeanor or of a felony, whether a first offender or a recidivist, the indeterminate sentence is indispensable, and the possibilities of the suspended sentence and the parole have not yet been fully developed.

Better supervision upon the part of the state for all offenders, whether misdemeanants or felons, under parole or under suspended sentence, should be provided. Under our present system, no labor whatsoever is provided for persons given a jail sentence, no method is provided to compel them to pay the cost of their conviction, and but a very small amount is received for the labor of the penitentiary prisoners working under the contract system. These factors make the cost of crime in Iowa far greater than the public imagines, while, in addition, thousands of innocent persons are made to suffer by reason of our form of punishment. They are deprived of the support of the bread winner, and he is not so severely punished, having, at least, a warm place to stay and good board and clothing at the expense of the state. This is due primarily to our failure to properly employ, at productive labor, persons sentenced for crime.

Jurors are supposed to follow the instructions of the court and consider only the guilt or innocence of the defendant, leaving it to the court to prescribe the punishment as by law provided; but every prosecuting attorney knows that the majority of verdicts are determined by the sympathies of the jurors. Therefore, they know that unless they can adduce sufficient evidence to remove the natural sympathy which some jurors always have, there is but little probability of conviction. The criminal lawyer understands this when he has the wife, the little children or the gray-haired mother in the court-room and as close to the jurors as possible; and these methods are followed to-day because of the fact that the old theory of vindic-

tive punishment is still prevalent in the minds of the people, and because jurors feel that our penal institutions are, at least to some extent, torture chambers. The very large number of acquittals in this country due to verdicts based on sympathy and the technicalities of the law furnished the basis for President Taft to say: "The administration of criminal law in this country is a disgrace to our civilization."

The question of prison labor is the very foundation of all reformation. All other questions are incidental. The ultimate thing to be obtained is, so far as possible, to make the offender right the wrong which he has committed, but in doing this to see that another and greater wrong does not follow as a necessary consequence. This can be done only by requiring and compelling every offender to work at some productive, healthful labor, not unduly prejudicial to the free laborer, free producer and manufacturer, and by paying him a wage which will enable him to support himself and contribute toward the support of those dependent upon him.

If we make up our minds that the state can do what can be done under private management, if we go about it in a thorough business-like way, if we eliminate all politics and everything that savors of politics or favoritism, and if we make proper allowance for the care and education of the ignorant and the defectives, we can place Iowa in the forefront of all states in the Union in the care and reformation of her unfortunate and criminal classes. We can aid every man to live a useful life, notwithstanding his past record. We can discontinue the present evil policy of punishing his family and those dependent upon him more than we punish the convict, and we can reduce to a minimum the economic waste incident to confining men in idleness or exploiting them under the vicious contract convict labor system. We can do this if we have the courage, the vision and the patriotism to do the things which are plainly necessary; but we cannot do it by a mere pretence of reform, by false economy, by opportunism and temporizing.